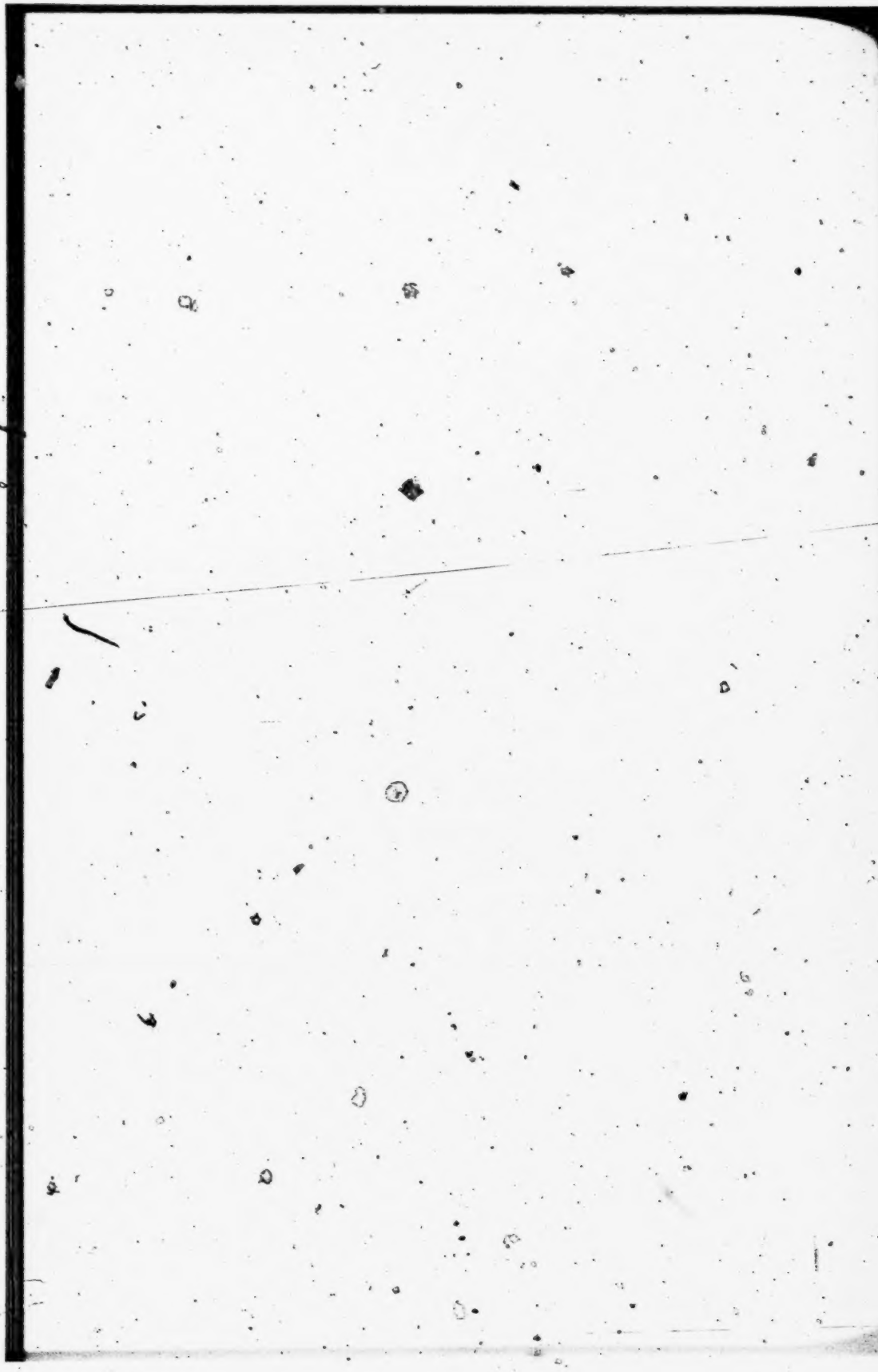

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No. 298

# In the Supreme Court of the United States

OCTOBER TERM, 1933

S. M. NICKEY, W. E. NICKEY,
MRS. ORPHA L. NICKEY, et al, Appellants

vs.

STATE OF MISSISSIPPI

## REPLY BRIEF OF THE APPELLANTS

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Attorneys for the Appellants.

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## REPLY BRIEF OF THE APPELLANTS

The appellee in this case has taken three positions, neither of which is consistent with the others.

The first of these positions is:

The complainant pleaded the assessment roll as a judgment imposing personal liability, when the following averments were made, Record 2 and 3:

> "Complainant further shows to the Court that all of said lands (the first tract) were duly and legally assessed to the said A. B. Nickey & Sons for the year 1928, and reference is hereto made to the tax rolls of said county, which original rolls will be produced at the hearing of this case", and "Complainant is informed and believes that said taxes are a

debt due by said defendants to the state, county, levee and drainage districts, and that said taxes are recoverable by suit at the instance of the Attorney General".

Since assessment involves valuation of property; equalization with relation to other property in the county and state, especially where the courts take judicial notice of the fact, that to under value property is the common practice; ownership and identity of parties; and, where personal liability is sought to be imposed, jurisdiction of the person sought to be charged, this pleading tendered the following issues:

A. The land has a value, including the timber, of $80851, the naked land, $21305, and the timber, $59546;

B. These values bear a proper relation to the value fixed generally on lands in the county and state, so as to make the relative values uniform.

C. An assessment against A. B. Nickey & Sons is an assessment against S. M. Nickey, W. E. Nickey and Mrs. Orpha L. Nickey, and they are the owners of said land.

D. They were summoned or were otherwise brought under the jurisdiction of the assessing authorities at a stage of the assessment proceedings which afforded them such a hearing as authorized the rendition of a judgment which imposed personal liability for the payment of the taxes which were levied upon the assessment base of $80851, upon which the tax was calculated, in the sum of $2975.54, for which judgment was entered.

E. Said sum of money is now past due and the Attorney General has the right to maintain an action and subject another tract of land on which the taxes have been paid, to the payment of the personal debt imposed by the judgment.

Section 8189, Hemingway's Code of 1927, makes the roll prima facie correct. Therefore, issue "A" would have been established, but for the subsequent pleading of the complainant, to the effect that the land was not worth the taxes. The roll, which was made an exhibit to the bill, showed the value of the naked land to be $21-305, and the value of the timber to be $59546, a total of $80851, which constituted the base on which the advaforem taxes were calculated, in the sum of $2975.54, excluding the drainage district charges and costs and damages, which the State Supreme Court held could not be recovered. There is no escape from the conclusion, that the defendants were not required to overthrow the prima facie correctness of the roll, in the face of an averment that the naked land is not worth $2975.54, but that the value of it may be assessed at $21305. Pleadings stand on the law as it is, not on the law as it is conceived to be by the pleader; but if the averment could stand on the erroneous theory, that costs, damages and drainage district charges were recoverable, the case rests on no better foundation. The whole demand was $7483.22, and the averment is, that $21305 will not pay it. It would have been utterly foolish for the defendants to offer proof to overthrow the prima facie case made by the roll,

under the statute, in the face of the admission that the land had only a little more than one-third the value shown by the roll.

The defendants were not required to overthrow the presumption in favor of the complainant, on issue B, because the pleadings admit that the land is assessed at nearly three hundred percent of its value.

The defendants contested issue C, in the state court, but the State Supreme Court decided the issue against the defendants and it is the view of the appellants here that this decision is conclusive against them.

There is no pretense whatever and never has been, that the appellants were summoned or appeared or otherwise submitted themselves to the jurisdiction of the assessing authorities at any stage of the assessment proceedings, or that they had a hearing thereon. Neither is it pretended that the assessing authorities were authorized to render a personal judgment against them, nor is it pretended that such a judgment was entered there.

Since the office of the statute, to establish prima facie the correctness of the roll was destroyed by the averment of the bill and the proof that no jurisdiction was obtained, it follows that no money has ever become due and that the Attorney General had no right to prosecute the suit by the attachment of other land on which the taxes had been paid, for the purpose of collecting a personal debt which was not imposed, by a judgment which was never entered.

The defendants were summoned in this case by publication in a newspaper. R., 18, Exhibit No. 2. The defendant in *Mitchell vs. Neff*, referred to in *Pennoyer vs. Neff*, 95 U. S., 714, at page 716, was summoned by publication. Pennoyer rested his title to the land in controversy on a sale under execution on the judgment rendered in *Mitchell vs. Neff*, which this Court held to be void, for the same defect which the appellants urge here, that is, that a judgment without personal service of process is void. The tract of land attached in the case at bar occupies the same situation as the land in controversy in *Pennoyer vs. Neff* occupied. This Court held that the sale of the land in the Pennoyer case was void, and there is no escape from the proposition, that the second tract of land owned by the appellants was not subject to attachment and sale to satisfy the judgment which was never rendered, and which would have been void if it had been rendered.

The second position, page 21, original brief of appellee, is:

In bringing this action, appellee was guided by the opinion on *Mexican Central Railway Company vs. Pinkney*, 149 U. S., 194. Counsel purport to quote the language of this Court in the above styled case, but the quotation which appears at page 22 of the original brief appears to have been taken from the opinion in *Dewey vs. Des Moines*. At any rate, cousel for the appellants have not been able to find the language quoted, in the opinion in *Mexican Central Railway Company vs. Pinkney*. In this situation, speculation will be availed of by the appel-

lants and it will be assumed that the appellee relied on the language of the Court, which appears at page 209 of the report, as follows:

> "Jurisdiction is acquired as against the person by service of process; but as against property within the jurisdiction of the court, personal service is not required. *Boswell vs. Otis*, 9 How. 336; *Pennoyer vs. Neff*, 95 U. S. 714. But it is well settled that no court can exercise, at common law, jurisdiction over a party unless he is served with the process within the territorial jurisdiction of the court, or voluntarily appears. *Kendall vs. United States*, 12 Pet. 524; *Harris vs. Hardeman*, 14 How. 334."

It appears to the appellants that this language, as applied to the case at bar, means that the land on which the taxes were delinquent was the subject of an assessment in rem, but that the judgment did not have the effect to bind the appellants personally. It does not appear to be possible to hold the attached land liable although it was located in the territorial jurisdiction of the state, in view of the fact that no control over it was exercised when the assessment was made against the other land. It was the subject of another assessment.

*Virden vs. Bowers*, 55 Miss., 1, *Powell vs. McKee*, 81, Miss., 229, and *Grenada Bank vs. Town of Moorhead*, 160 Miss., 163, are relied on by the appellee to establish that taxes in Mississippi constitute a debt for which a personal action may be prosecuted. The first of these cases involved the validity of a tax title and the constitutionality of a statute making a tax collector's debt prima

facie evidence of the regularity of tax assessments. The language of the Court, at page 20, to the effect that a legal assessment constitutes the owner of the property debtor to the state is obiter dictum.

In the second case, the court held that an assessment of personal property to an unknown owner is valid. The proceeding by the tax collector was directly against the property assessed. The action was to enjoin the sale of the property. Whether the owner of the property was personally liable was not before the Court and the determination of this question was not necessary to the decision of the case.

In the third case, the Court held an assessment to constitute a judgment rendered for money to be paid, as well as fixing a lien on property. No question of personal liability was there involved.

In *McLaren vs. Moore*, 60 Miss., 376, at page 382, it is said that the state, by its purchase, becomes the owner of the land and the taxes before due are discharged as a demand against the former owner, and that, thereafter only the land is debtor for its taxes. This statement is also obiter dictum, for the question there involved was not one of personal liability under an assessment.

It is said, on the authority of *Grenada Bank vs. Town of Moorhead*, that it is not open to dispute that the assessment for taxes is a judgment rendered for money to be paid, as well as fixing a lien on the property.

Whatever may have been the views of the Supreme Court of Mississippi in using the language here under consideration, these statements are subject to the exception, that, before personal liability can be imposed, personal service must be had on the taxpayer, at some stage of the assessment proceedings. In the absence of such service, the judgment is one in rem only.

The Appellee quotes a part of the opinion in *Wells, Fargo & Company vs. Nevada*, 248 U. S., 165, to the effect, that there is no want of due process where the mode of enforcing the tax is the judicial proceeding to establish personal liability. In Mississippi, the mode of enforcing the payment of the tax is by a sale of the property assessed, and, as was said by counsel for the appellee, at pages 19 and 20, of the original brief, the judgment became final when the assessment was made. In the Wells, Fargo case, the judgment did not become final until after the judicial determination of the question of personal liability.

The third position taken by the appellee, pages 5, 6 and 7, supplemental brief appears to be, that the state is entitled, in the case at bar, to distrain goods to satisfy taxes lawfully levied. *Scottish Union & National Insurance Company vs. Bowland*, 196 U. S., 611, is cited to support this view. It is submitted, that this action is not one for distress of goods, but an action to sell attached land for the purpose of satisfying a personal judgment. The appellee must stand on the case presented by the pleadings, not on it as counsel might have presented it. The remedy provided by the statutes of Mississippi is by sale of the land.

The case cited to support the position of the appellee is not in point, for the Court expressly declined to decide whether there was personal liability. The part of the decree which awarded an injunction against the prosecution of a civil suit was reversed, for the reason, that the defense, that a personal judgment was improper, could be made by answer in an action at law seeking to impose such personal liability, and there was no necessity to resort to a court of equity for relief. The Court said, "It will be presumed, if the claim of the company is right, no personal judgment will be rendered against it, and if its theory of the controversy is correct, no such judgment can be lawfully rendered". In the brief of counsel for the insurance company, page 616 of the Official Report, it was contended that the insurance company was a non-resident absent from the state, and personal judgment could not be rendered against it. That part of the opinion of the Court quoted, supra, approved this view, which is the view of the appellants in the case at bar.

*Bristol vs. Washington County*, 177 U. S., 133, is cited to support the theory that other property of a non-resident within the jurisdiction of the state may be sold to pay the tax. Counsel are unfortunate in quoting from the opinion in this case. At page 10 of the supplemental brief, counsel quote the Court as saying that no defense upon the merits appeared to have been relied on except the want of service. The Court said that no defense upon the merits appeared to have been relied on except the want of *situs*. The personal property of Mrs. Bristol could not have been taxed at all, if it had

not acquired a business situs which rendered it subject to the jurisdiction of the state, and the appellants in the case at bar invoked the same rule of law, the only difference being that in the one case, the immediate subject of taxation was property, and in the other persons.

Under the statutes of Mississippi, the lien is limited to the property which is the immediate subject of taxation, but in Minnesota, personal property taxes are a lien on all of the personal property belonging to the persons assessed. See page 146 of the official report of *Bristol vs. Washington County.*

In the original brief of the appellee, it is said that one of the questions before this court, is whether or not the assessments were duly and legally made in the manner provided by law. This statement is entirely too broad and indefinite. The question before this Court, is whether the assessment had the constitutional effect to impose personal liability on the appellants. The assessment was attacked both as a judgment in rem and a judgment in personam. The appellants take the view, that the decision of the Supreme Court of Mississippi is final, on the validity of the judgment as one in rem, but the appellants contend that the judgment is void as imposing personal liability, in view of the due process clause of the Federal Constitution.

Another question which the appellee conceives to be presented, is whether the Attorney General, under his common law and statutory powers, had a right to institute this suit. The appellants do not contend that

this court can or should decide whether he had such authority, but the appellants do contend that the Attorney General had no right to form a conspiracy with the Tax Collector of Tunica County, to discriminate against the appellants, contrary to the Federal Constitution.

The third question which the appellee conceives to be involved here is whether, in rendering judgment imposing personal liability, the due process of law clause of the Federal Constitution was violated. The appellants respectfully submit that it was.

The fourth question, according to the appellee, is whether or not the state, in collecting taxes, is confined to recovery out of the property assessed, or whether it may proceed against other property to collect taxes. It is the view of the appellants, that the statutes command the sale of land for taxes, which sale operates as a discharge of the personal liability, if any ever was imposed, of the benefit of which they have been deprived by the oppressive conduct of the Attorney General and the Tax Collector in violation of the Federal Constitution. The question is not, whether the state may proceed against other property to collect its taxes, but whether the state may plead an assessment roll as a judgment imposing personal liability, and proceed thereunder to sell other property, in the face of the fact, undisputed, that the assessing authorities had no jurisdiction whatever over the appellants.

Since the foregoing part of this brief was dictated, General Lauderdale delivered a copy of another brief written in behalf of the appellee, wherein he undertakes

to show that this Court is without jurisdiction, among other things. The point is, (a) the federal questions here complained of were not raised in the court below, (b) the State Supreme Court held that the proceedings in the chancery court and not the tax assessment fixed the personal liability, and this does not involve a federal question, and (c) the federal questions attempted to be raised have been foreclosed and precluded by previous decisions of the Supreme Court of the United States.

In the opinion of Justice Anderson, R., 55, he said one of the questions was, whether Section 3122, Code of 1930, declaring a lawful tax a debt, for which action may be brought, violates the due process provisions of the state and federal constitutions, and that another question was whether or not the state had the right to bring this suit before the tax collector of the county had exhausted the statutory remedies provided for the collection of such taxes.

As stated by Chief Justice Smith, the questions were, whether the courts have power to collect taxes through their judicial processes, and whether the state has the power to impose personal liability on non-residents for taxes on property owned by them within the state.

A federal question which the highest state court regards as duly before it for consideration, and which it proceeds to determine, will be regarded by the Supreme Court of the United States, on writ of error to the state court or appeal from its judgment, as duly made.

*Miedreich vs. Lauenstein,* 232 U. S., 236, 58 Law. Ed., 584, 34 Sup. Ct. Rep., 309.

A federal question must be deemed to have been presented with sufficient clearness to sustain a writ of error from the Federal Supreme Court, to a state court or an appeal from its judgment, where the latter court has held that the question was sufficiently raised, and decided it. *St. Louis I. M. & S. R. Company vs. Hesterly,* 228 U. S., 702 57 Law. Ed., 1031.

A right claimed under an authority exercised under the United States will be regarded as "specially set up or claimed", within the meaning of U. S. Rev. Stat. Sec. 709 (U. S. C. title 28, Sec. 344), defining the appellate jurisdiction of the Supreme Court of the United States over state courts, where it clearly and unmistakably appears from the opinion of the state court that the Federal question was assumed to be in issue, that the decision was against the Federal claim, and that the decision of the question was essential to the judgment rendered. *Montana ex rel. Haire vs. Rice,* 204 U. S., 291, 27 Sup. Ct. Rep. 281, 51 Law. Ed. 490.

The objection that a carrier sued for the death of an employee was estopped to rely upon the Federal employers' liability act of April 22, 1908 (35 Stat. at L. 65, chap. 149, U. S. C. title 45, Sec. 51), by having pleaded contributory negligence and thus having relied upon the state law, is not available to defeat a writ of error from the Federal Supreme Court to a state court, where the latter court held that the Federal question

was sufficiently raised, and decided it. *St. Louis, I. M. & S. R. Co. vs. Hesterly*, 228 U. S., 702, 33 Sup. Ct Rep., 703, 57 Law Ed., 1031.

A Federal question must be deemed to have been raised in the state courts with sufficient definiteness to comply with the provisions of the Judicial Code, Sec. 237 (U. S. C. title 28, Sec. 344), governing writs of error from the Federal Supreme Court to state courts, where it appears from the opinion of the state supreme court that a question of the equal protection of the laws, under U. S. Const. 14th Amend. was treated as sufficiently raised, and was specifically dealt with and ruled against the plaintiff in error. *Mallinckrodt Chemical Works vs. Missouri ex rel.* Jones, 238 U. S., 41, 35 Sup. Ct. Rep. 671, 59 Law. Ed., 1192.

The objection that the Federal question was not properly and seasonably raised in the state courts is not available to defeat the jurisdiction of the Supreme Court of the United States of a writ of error to the highest court of a state, where it clearly and unmistakably appears from the opinion of that court that the Federal question was assumed to be in issue, was decided against the claim of Federal right, and that the decision of the question was essential to the judgment rendered. *Chambers vs. Baltimore & O. R. Co.* 207 U. S., 142, 28 Sup. Ct. Rep., 34, 52 Law. Ed., 143.

A decree of the highest state court which affirmed a decree below, adjudging a person to be in contempt, is reviewable in the Federal Supreme Court, where the state court, instead of disregarding the claim of Federal

right set up by defendant in his answer, on the ground that it had been abandoned in the trial court, recognized the Federal contention, and by its decision necessarily overruled. *Carlson vs. Washington ex. rel.*. Curtiss, 234 U. S., 103, 34 Sup. Ct. Rep., 717, 58 Law. Ed., 1237,

No complaint was made by the appellee for failure to set up, specifically, the Federal questions, in the assignment of errors said to have been committed by the chancery court, in the Supreme Court, until after three briefs had been written on the case in this court. The appellee, the appellants and the Supreme Court of the State of Mississippi have considered these questions as presented, without such strictly technical specifications as General Lauderdale now insists on. If any point had been made prior to or during the hearing in the State Supreme Court, such a defect, if it exists, could and would have been remedied by the appellants, upon the authority of Section 3375 of the Code of 1930, which provides that an appeal shall not be dismissed for want of jurisdiction because of a defect in the application for appeal, or in the bond, or because of any failure by an officer to comply with the requirements of law in reference to appeals but *all defects and irregularities* may be cured by amendment, so as to perfect the appeal and obtain the judgment of the Supreme Court in the case.

Subdivision B, Point I, is a little difficult to understand. If the writer of this brief understands it, it is involved in Subdivision A, so that the answer to one will be a sufficient answer to the other. It was contended in the State Supreme Court, that the defendants in the

chancery court could appear for the purpose of being relieved of the assessment and their personal liability, without consenting or rendering themselves liable to the imposition of a personal judgment in the chancery court when, admittedly, no such judgment was rendered against them during the assessment proceeding. The State Supreme Court decided that they did thereby consent and render themselves liable to the imposition of a personal judgment for the payment of taxes, contrary to the holding of this court in *Dewey vs. Des Moines*, 173 U. S., 193, 43 Law. Ed., 665.

The authorities on which the appellants rely to support their claim that the chancery court hearing on the questions here presented cannot answer the purpose of giving a hearing such as will warrant the imposition of a personal judgment, for the reason that taxes cannot be assessed, equalized or levied, by that court, are:

*State vs. Tonella*, 70 Miss., 701, at pages 709 to 714. *Brooks vs. Shelton*, 47 Miss., 243, at page 247. Ex Parte Wimberly, 57 Miss., 437, at page 447. *Railroad Company vs. Adams*, 73 Miss., 648, at pages 659 to 662. *Thompson vs. Kreutzer*, 103 Miss., 388. *Johnson vs. Puffer Manufacturing Co.*, 111 Miss., 240, at pages 242 and 243. *Mississippi Railroad Commission vs. Western Union Telegraph Company*, 107 Miss., page 442, at page 452. Griffith's Chancery Practice, Section 441, page 466, *Preston vs. Sturgis Milling Company*, 183 Fed., 1.

Chief Justice Smith made an incomplete statement of the position of the appellants, when he said, R., 76, that the first contention of the appellants, on suggestion

of error, in that the courts are without power to collect taxes through their judicial processes. The position of the appellants, as stated in the Suggestion of Error, Paragraphs 1 and 8, R., 73 and 74, is that the chancery court had no constitutional authority to assess, which involves listing and equalizing, or collect taxes or to impose personal liability therefor, for the reason that the Legislature has not delegated any such power, and since that court had no such power, the Supreme Court was not authorized to affirm its decree in that respect. The Constitution of Mississippi vests this power in the county tax assessor. See Section 135 and 138, Constitution of 1890.

The second statement made by Chief Justice Smith is incomplete. The position of the appellants is that no state can impose personal liability on non-residents for the payment of taxes on property owner by them within the state, without personal service of process at some stage of the assessment proceedings. A statute which lays down a rule of evidence and authorizes a court to judicially determine liability, cannot be amended by the judicial department of the government so as to empower the courts to make an assessment where none was made by the authorities vested with the power to make such assessments. The courts may judicially determine whether a liability exists or not, and the processes of the court may be used to collect the taxes if the liability exists, but an appearance of a litigant in the courts of the state creates no liability for taxes where none existed before the appearance. Taxes are imposed by assessment and liability is not created by an appearance of a litigant who owed no legal duty to pay, personally, the demand.

In the April, 1919, Number of Harvard Law Review, Professor Joseph H. Beale, of Harvard Law School, wrote an article, "Jurisdiction to Tax." From it, the following is quoted:

"The power to tax is one of the attributes of sovereignty; and the jurisdiction to exercise the power is coterminous with the bounds of the sovereign's jurisdiction. 'It is obvious that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends are objects of taxation, but those over which it does not extend are, upon the soundest principles, exempt from taxation . . . . The sovereignty of a state extends to everything which exists by its own authority or is introduced by its permission . . . . The power to tax involves the power to destroy.'

"The power of taxation, however, vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property and business.' 'The taxing power of the state . . . . cannot reach over into any other jurisdiction to seize upon persons or property for purposes of taxation. No officer, however armed by statute or court process of this state, can seize upon (such property) for taxes.' A personal tax may be laid upon persons subject to the jurisdiction of the sovereign; a property tax upon all property situated in his territory; an excise or license tax upon all acts done within his boundaries.

"The sovereign who has power to tax is that sovereign who by personal ownership of the territory has the general control of it. Thus where land near the New Jersey shore, under the waters of New York bay, were taxed by New Jersey this tax was held valid, though 'exclusive jurisdiction of and over all the waters of the Bay of New York . . . . and of and over the land covered by said waters' was by agreement of the two states given to New York, saving to New Jersey 'the exclusive property in and to the land under water' on the west side of the bay. Mr. Justice Holmes said that 'The boundary line is the line of sovereignty . . . . Boundary means sovereignty since in modern times sovereignty is mainly territorial, unless a different meaning clearly appears.' On the other hand, where land within a state is ceded to the United States for federal purposes the complete sovereignty passes away from the state, which can no longer levy taxes within the ceded territory.

* * * * * * *

"In the United States the power of a state to tax has been greatly affected by the Constitution of the United States. With constitutional questions as such we are not here concerned. In so far, however, as the Constitution is merely confining a state within the boundaries of its jurisdiction, a decision based upon the Constitution is quite in point on the question, how far does the jurisdiction of the state extend. In fact, the interpretation of several constitutional limitations, and particularly of the Fourteenth Amendment in its bearing on the taxing power, is

merely an exposition of the legal requirement of jurisdiction to tax. When this is the case, decisions upon the constitutionality of tax laws will be freely used as authorities in determining the legal jurisdiction to tax.

"A sovereign may impose upon everyone domiciled within his territory a personal tax, which is 'the burden imposed by government upon its own citizens for the benefits which that government affords by its protection and its laws.' Any domiciled person is subject to this tax, though he may be an alien or a corporation. The tax may be a poll-tax of fixed amount, a tax based to some extent upon wealth, or a tax payable in labor.

"No sovereign may lay a personal tax upon a person or corporation not domiciled within his territory. For this reason he cannot impose upon such a non-resident a personal obligation to pay a tax levied upon property within the territory. Land or a chattel within the territory is subject, as has been seen, to the taxing power although the owner is absent, and a tax laid upon such property may be enforced in rem, but the tax cannot be made a personal obligation of the owner, upon whom the sovereign has no jurisdiction to impose an obligation.

"This principle has been forcibly stated by the courts. Thus, in *Dewey vs. Des Moines,* Mr. Justice Peckham said:

" 'The state may provide for the sale of the property upon which the assessment is laid, but it cannot under any guise or pretense proceed farther and impose a personal liability upon a non-resident to pay the assessment or any part of it. . . . . The jurisdiction to tax exists only in regard to persons and property, or upon the business done within the State, and such jurisdiction cannot be enlarged by reason of a statute which assumes to make a non-resident personally liable to pay a tax of the nature of the one in question.' "

The appellants respectfully request the Court to give careful consideration to the dissenting opinions of presiding Justice Ethridge, of Division B of the State Supreme Court. The arguments there made by him will not be repeated by the appellants.

Justice Anderson, in stating, R., 55, the sixth question involved in the decision of this case, made an incomplete statement of it. The position of the appellants, is that the Attorney General had no right to maintain this action when he had formed a conspiracy with the tax collector to discriminate against the appellants in violation of the Constitution. This position is stated in Paragraphs 22 and 23 of the answer, in the chancery court, R., 13 and 14.

It is respectfully submitted that this case should be reversed and judgment entered here for the appellants.

W. E. GORE,
GEO. BUTLER,
Attorneys for the Appellants.

I hereby certify that I have this day delivered to Gen. J. A. Lauderdale, Jackson, Mississippi, Attorney for the Appellee, a true copy of the foregoing brief.

Witness my signature this December....., 1933.

W. E. GORE,
Of Counsel for Appellants.